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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NOBUYOSHI MORIMOTO

Appeal 2009-006363
Application 09/588,879
Technology Center 2400

Before JOHN A. JEFFERY, ST. JOHN COURTENAY III, and CAROLYN D. THOMAS, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING[1]

Appellant, pursuant to 37 C.F.R. § 41.52, has submitted a timely Request for Rehearing dated October 26, 2010 ("Request"), requesting rehearing of our original decision of August 26, 2010 ("Opinion") where we

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

affirmed-in-part the Examiner's decision rejecting claims 1-20, 23-30, and 32-37. Op. 1, 22.

We have reconsidered our August 26, 2010 Opinion in light of Appellant's comments in the Request, but we find no errors therein. We therefore decline to change our prior decision for the following reasons.

Appellant argues Shapira's request from a user's computer does not include a time value as required by independent claims 20, 26, 29, 30, 34, and 37.[2] In Appellant's view, the time value is added to the request by the server and thus Shapira's server does not receive "a request from a first computer . . . said request comprises . . . a time value" as recited in claim 20. *See* Req. 2-5. We disagree.

Shapira discloses "*[u]pon receiving the traffic data hit 11a* requesting web page http://www.example.com/portal_ad.htm, *the first web server 10* sends data back to the remote visitor . . . ." *See* Shapira, col. 5, ll. 35-38 (emphasis added). As we explained in the Opinion (*see* Op. 7), this "hit" or request 11a includes several pieces of information, including an access time. *See* Op. 5-6, FF 5. Shapira's "hit" 11a is thus more than a GET command, contrary to Appellant's position (Req. 4), since it includes both a GET command (i.e., GET/portal?ad.htm HTTP/1.0) *and* an access time (i.e., 12/Jan/1996:20:37:55+0000). *See* Op. FF 5. Also, as we indicated in the Opinion, a "request" has not been defined and can include multiple commands (*see* Op. 10), and this "hit" is a request from a remote visitor or the visitor's computer (*see* Op. 5, FF 3). Shapira therefore discloses a "hit"

[2] Appellant also includes independent claims 16 and 19. *See* Req. 5. However, as acknowledged (Req. 2 n.1), claims 16 and 19 were reversed on other grounds. We therefore need not further discuss these claims.

or request 11a with a time value received by the server, and not just a GET command.

Appellant cites to another passage in Shapira to demonstrate that the request or "hit" is encoded with an access time at the server. *See* Req. 3. This passage, however, is within Shapira's Background of the Invention section (*see* Shapira, col. 1, ll. 31-40), and its discussion is inapplicable to the embodiment relied upon to teach this recitation. *See* Ans. 3-4; Op. 7, 10-11. Moreover, within this cited passage, Shapira states that "[e]ach hit is also encoded with the date and time of the access" (Shapira, col. 1, ll. 39-40), but does not explain whether the server or some other structure encodes the access time. We are therefore unpersuaded by Appellant's assertions that Shapira teaches that the server inserts the access time and therefore allegedly fails to teach "a request from a first computer user . . . said request comprises . . . a time value" as recited in independent claims 20, 26, 29, 30, 34, and 37.

Appellant further contends that the terms, "hit" and "request" are used inconsistently in Shapira. Req. 4. But even assuming this is the case, as discussed above, Shapira's request (e.g., "hit" 11a) nonetheless has a time value as recited in claims 20, 26, 29, 30, 34, and 37.

Appellant also disputes that Shapira's access time is the time the website is accessed. Req. 4-5. According to Appellant, since the time a website is accessed is ordinarily determined when a request is received by the server, Shapira allegedly does not demonstrate that the user's computer would determine the access time when sending the request. *Id.* at 4. But mere arguments that are unsupported by factual evidence are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997).

Additionally, because Shapira's request 11a comes from the user's computer (*see* Op. 5-6, FF 5) as explained above, the associated time value corresponds to the user's access time. *See* Op. 5-6, FF 4; Op. 10. Thus, for the reasons stated above and in the Opinion (*see* Op. 11), we find that request from a computer received by the server includes a time value corresponding to the first computer user accessing a web site as recited in claims 20, 26, 29, 30, 34, and 37.

Appellant next contends that Shapira's time value is not the time at which a computer used by a first user was synchronized with a global time standard. *See* Req. 5-7. Notably, this limitation is not found in independent claims 30, 34, and 37, and thus this argument is not commensurate with the scope of these claims. Appellant finds the time value offset in Shapira merely refers to GMT) or a global time standard that can occur without synchronization. *Id.* at 6. Appellant further argues that synchronization is not inherent in Shapira. *Id.*

Appellant's arguments, however, are not commensurate with the scope of the claims. Given its broadest reasonable construction, the phrase "wherein the time value reflects a time at which a computer used by the first computer user to access the web site was synchronized with a global time standard" in claim 20 only requires the time value to be associated with or reflects a time at which a computer used by the user was synchronized with a global time standard. *See* Op. 10; *see also In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). Also, while Appellant provides examples from the disclosure of what "synchronization" means (Req. 6), these examples are non-limiting. That is, Appellant has not specially defined what "synchronized with a global time standard" means. *See*

generally Specification. Moreover, "[t]hough understanding the claim language may be aided by the explanations contained in the written description, it is important not to import into a claim limitations that are not a part of the claim. For example, a particular embodiment appearing in the written description may not be read into a claim when the claim language is broader than the embodiment." *SuperGuide Corp. v. DirecTV Enters, Inc.*, 358 F.3d 870, 875 (Fed. Cir. 2004) (citation omitted).

As explained in the Opinion (*see* Op. 10) and above, Shapira discloses that the access time includes *an offset from GMT* (e.g., "0000" in 20:37:55+0000). *See* Op. 5-6, FF 4-5. Additionally, we previously discussed how the first computer includes this access time. Thus, this access time has a time value that reflects a time that a computer must have coordinated with some mechanism (e.g., a global time standard) to create and include the GMT offset (e.g., how much the time is offset from a global time standard). Moreover, to obtain this GMT offset, Shapira must have coordinated the time to coincide with or synchronize with a global standard time (e.g., GMT) and thus is more than a reference to a global time standard. Shapira's time value therefore reflects a time the computer was synchronized with a global time standard as recited in independent claims 20, 26, and 29.

Regarding any dispute that the time value in Shapira does not correspond to the computer user accessing a web site because the time is added by the server and thus reflects a time the server was synchronized with a global standard time (Req. 7), we refer to our previous discussion.

We have considered the arguments raised by Appellant in the Request. We have therefore granted the Request to the extent that we have

reconsidered our decision of August 26, 2010, but we deny the request with respect to making any changes therein.

REHEARING DENIED

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